



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

75 Hawthorne Street
San Francisco, CA 94105

JUL 24 2007

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Return Receipt Requested

Leslie R. Schenck
Omega Chemical Site PRP Organized Group
Garvey Schubert Barer
1191 Second Avenue
Seattle, WA 98101-2939

Re: Decision of EPA Region 9's Superfund Division Director Resolving
OPOG's Dispute of 2005-06 Oversight Costs Under February 28, 2001
Partial Consent Decree, Omega Chemical Superfund Site

Dear Ms. Schenck:

This decision is provided in response to formal dispute resolution initiated by the Omega Chemical Site PRP Organized Group ("OPOG") under paragraph 57.b of the above-referenced consent decree ("Partial CD"). OPOG disputes oversight charges that the United States Environmental Protection Agency ("EPA") has paid to its contractor, CH2M Hill ("Hill"), in the amount of \$170,537.01, on the basis that no substantive backup for Hill's charges has been provided to EPA or OPOG, and that, as a result, neither EPA nor OPOG can evaluate whether Hill's charges are proper.

EPA prepared an administrative record that contains all Statements of Position, submitted by the parties, as well as documentation accompanying and supporting these Statements.¹ The Partial CD provides that, based on the administrative record, the Director of EPA's Region 9 Superfund Division is to issue a final administrative decision resolving this dispute.

As I stated during our meeting, I have reviewed this matter in an effort to ensure that OPOG is treated fairly in this case and relative to other sites. From both a legal and an equitable perspective, I believe that EPA has provided more than sufficient information to support the charges Hill has claimed. Therefore, I am denying OPOG's request that EPA direct Hill to provide additional documentation to support and substantiate the

¹ All documents referenced in this decision can be found in the Administrative Record, entitled "Omega Chemical 2005-06 Oversight Costs Dispute", maintained at the Whittier Central Public Library, 7344 South Washington Ave., Whittier, CA 90602, the designated administrative record repository for the Omega Chemical Superfund site.

charges Hill has claimed.² OPOG may appeal this decision within 21 days of OPOG's receipt of this letter, by filing with the U.S. District Court, Central District, a motion for judicial review, in accordance with the Partial CD (paragraphs 44, 45). If OPOG does not appeal this decision within the 21 day timeframe, OPOG must pay to EPA the balance of the oversight costs currently held in escrow, plus interest, within five days after the end of the appeal period.

Background.

This cost dispute arose after EPA requested payment from OPOG on November 28, 2006, for 2005-06 oversight costs pertaining to the Site. On January 8, 2007, OPOG initiated informal negotiations consistent with the Partial CD, and subsequently invoked formal dispute resolution procedures by serving a written Statement of Position on March 12 ("OPOG Statement"). EPA served its Statement of Position on March 26, to which OPOG replied on April 2. I met with EPA representatives in my office on May 31, 2007, and with OPOG representatives on June 7, to discuss the parties' respective positions.

Prior to these meetings, the parties communicated with each other in an effort to resolve the dispute. EPA provided to OPOG details about Hill's internal quality assurance/quality control process, and addressed in detail EPA's own review of Hill's bills. EPA also provided OPOG with the Monthly Status Reports ("MSRs") for the 2005-06 billing period, prepared by Hill, as well as a sample of one of Hill's timesheets.

OPOG maintains that EPA must do more, and require Hill to provide its timesheets and any other documentation that may exist, to ensure that the charges submitted by Hill are properly claimed by EPA as Oversight Costs, as defined in the Partial CD, and that there have been no accounting errors in such billing.

The Partial CD does not require more than EPA has provided.

By its own terms, the Partial CD does not require EPA and Hill to do more to document costs. It only requires EPA to provide a "Regionally Prepared Itemized Summary Report which includes direct and indirect costs incurred by EPA and its contractors, and a DOJ prepared cost summary, which reflects costs incurred by DOJ and its contractors, if any, on a periodic basis." (Paragraph 44). EPA provided this information to OPOG for the disputed bill and is not required under the Partial CD to provide any additional documentation.

In addition, as described in EPA's Statement of Position, the NCP does not require EPA to provide additional documentation to substantiate Hill's charges. Rather, it requires only that, in general, documentation be sufficient to provide an accurate accounting of costs incurred.

² Specifically, OPOG has requested "documentation setting forth the work being done and the charges associated with this work, in the form of timesheets or other documentation showing the detailed descriptions of the work done, who did the work, when the work was done, tasks performed, time spent, and hourly rates". (OPOG Statement at p. 11).

Built-in safeguards ensure the accuracy of timekeeping and billing.

Both EPA and Hill go through a review and quality assurance (QA) process prior to submitting and paying bills, which ensures the accuracy of their bills and safeguards against accounting errors. Hill's QA process includes several layers of management review of a Hill employee's inputted time. In addition, Hill's program manager for the contract certifies the accuracy of each of its invoices."³

Systemic safeguards also exist in EPA's review process, as summarized by EPA in a letter to OPOG on April 13, 2005. Before Hill could even be awarded an EPA work assignment, it was required to submit work plans that estimate the time and expense of completing various specified tasks. As the work on these tasks is being completed, EPA's project manager has frequent discussions with the site manager at Hill, and often with other Hill employees, regarding the progress of the work. The project manager reviews Hill's MSRs and associated monthly invoices, to ensure the accuracy of actual work performed and costs incurred for each work assignment, including the personnel involved and hours billed. In effect, the project manager is reviewing on an ongoing basis the progress and status of each task towards its objective, and the consistency of the work with the project schedule and budget. At the end of a billing period, EPA's cost recovery section conducts a page-by-page review to verify the accuracy and consistency of the cost summary prepared by EPA accounting personnel. The project manager and site attorney also review the cost summary to ensure its accuracy.

Government audits and contractor requirements, such as the federal acquisition regulations, provide a further assurance that contractor costs are accurately recorded, and serve as a deterrent to EPA contractors that may consider inappropriate billing practices. The Defense Contract Audit Agency ("DCAA") periodically administers audits of EPA contracts. In fact, DCAA has audited Hill over one hundred times since 1995. For more information on DCAA and its audit process, you can access the DCAA website at <http://www.dcaa.mil>. The Office of Inspector General and General Accountability Office audit contractor practices as well. The mere fact that Hill is subject to frequent auditing reduces the risk of fraud and provides incentives to Hill for accurate timekeeping and billing.

EPA provided OPOG with at least as much supporting documentation as it provides other PRPs; the burden of providing additional information outweigh potential benefits.

In administering its statutory and regulatory authority, EPA endeavors to promote fairness and consistency on a regional and national level. Here, EPA is treating OPOG fairly, as compared to other PRPs. Although EPA could insist on providing only the itemized cost summary, it has in fact provided all the additional documents in its possession to OPOG for review. This type of documentation is consistent with that provided to PRPs at other sites, when they request documentation over and above the

³ Mr. Udai Singh certifies that: "all payments requested are appropriate and in accordance with the agreement set forth in the contract; that payments have been made to all construction subcontractors from previous payments, and that timely payments will be made from proceeds covered by this certification."

itemized cost summary. To allow OPOG to receive Hill's timesheets would not be generally consistent with EPA's national practice.

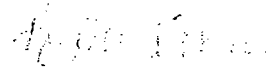
By requesting Hill's timesheets, OPOG is seeking documentation that is not even obtained or reviewed by EPA. To change this practice would be a burden on the agency that is not balanced with the benefit of doing so. Even if OPOG was to review the timesheets itself, as it has offered to do, a burden on the agency would remain. EPA would still be required to review the timesheets to evaluate confidential information that may need to be redacted and to review timesheets in which OPOG raised a question or dispute. Meanwhile, the only additional piece of information that OPOG would glean from reviewing Hill's weekly timesheets is the understanding of what particular day a Hill employee billed the hours that are encompassed within the MSRs. The other information sought by OPOG --the name of the employee who performed the work in question; the month in which the specific task was performed; a description of that task; the number of hours spent on the task by that individual; the hourly rates of the employee; and the dollar amount billed to the task-- are already available from the itemized summary report and MSRs.

Conclusion.

In sum, the Partial CD signed by the parties does not require EPA to provide documentation other than that which OPOG has received. Further, it does not even require some of the documentation that EPA agreed to provide to resolve this cost dispute (i.e., the MSRs). The documentation provided to OPOG is beyond that which EPA typically provides to PRP groups and is more than adequate to verify the accuracy of the 2005-06 charges. EPA has a process for determining whether Hill charges are appropriate, and has followed that process for the 2005-06 oversight bill. Likewise, Hill has an internal process for ensuring accuracy of its bills. Finally, Hill contracts are regularly audited, providing another layer of accountability to Hill timekeeping procedures.

For the foregoing reasons, I hereby deny OPOG's request that EPA direct Hill to provide additional documentation to support and substantiate the charges Hill has claimed.

Sincerely,



Keith Takata
Director, Superfund Division

cc: Larry Gutteridge
Gene Lucero
Karl Fingerhood
Bruce Gelber
Chris Lichens
Steve Berninger
Thanne Cox
Lewis Maldonado
Allyn Stern